

### § 3.1009

amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

[26 FR 1609, Feb. 24, 1961]

#### § 3.1009 Personal funds of patients.

The provisions of this section are applicable to gratuitous benefits deposited by the Department of Veterans Affairs either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:

(a) *Eligible persons.* Gratuitous benefits shall be paid to the living person first listed as follows:

(1) His or her spouse, as defined in § 3.1000(d)(1);

(2) His or her children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;

(3) His or her dependent parents (in equal shares) as defined in § 3.59 or the surviving parent, provided that the parent was dependent within the meaning of § 3.250 at the date of the veteran's death.

(4) In all other cases, only so much may be paid as may be necessary to reimburse a person who bore the expense of last sickness or burial. (See § 3.1002.)

(Authority: 38 U.S.C. 5502(d))

(b) *Claim.* Application must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit for the submission of evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the

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amount payable to another or others in the class.

[27 FR 5539, June 12, 1962, as amended at 28 FR 10487, Sept. 28, 1963; 39 FR 30349, Aug. 22, 1974]

#### Subpart B—Burial Benefits

EFFECTIVE DATE NOTE: At 79 FR 32658, June 6, 2014, subpart B was revised, effective July 7, 2014. The revised subpart appears after the text of this subpart.

AUTHORITY: 105 Stat. 386, 38 U.S.C. 501(a), 2302–2308, unless otherwise noted.

#### § 3.1600 Payment of burial expenses of deceased veterans.

For the purpose of payment of burial expenses the term *veteran* includes a person who died during a period deemed to be active military, naval or air service under § 3.6(b)(6). The period of active service upon which the claim is based must have been terminated by discharge or release from active service under conditions other than dishonorable.

(a) *Service-connected death and burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 2307 (or if entitlement is under § 3.40(b), (c), or (d), an amount computed in accordance with the provisions of § 3.40(b) or (c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. Entitlement to this benefit is subject to the applicable further provisions of this section and §§ 3.1601 through 3.1610. Except as provided in § 3.1604(d)(5), payment of the service-connected death burial allowance is in lieu of payment of any benefit authorized under paragraph (b), (c) or (f) of this section.

(Authority: 38 U.S.C. 2307)

(b) *Non-service-connected death burial allowance.* If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 2302 (or if entitlement is under § 3.40(b), (c), or (d), an amount computed in accordance with the provisions of § 3.40(b) or (c)) may be paid toward the veteran's funeral and burial

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expenses including the cost of transporting the body to the place of burial. Entitlement is subject to the following conditions:

(1) At the time of death the veteran was in receipt of pension or compensation (or but for the receipt of military retirement pay would have been in receipt of compensation); or

(2) The veteran has an original or reopened claim for either benefit pending at the time of the veteran's death, and

(i) In the case of an original claim there is sufficient evidence of record on the date of the veteran's death to have supported an award of compensation or pension effective prior to the date of the veteran's death, or

(ii) In the case of a reopened claim, there is sufficient prima facie evidence of record on the date of the veteran's death to indicate that the deceased would have been entitled to compensation or pension prior to date of death. If the Department of Veterans Affairs determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, it shall be submitted within 1 year from date of request to the burial allowance claimant for submission of the confirming evidence. If the confirming evidence is not received by the Department of Veterans Affairs within 1 year from date of request, the burial allowance claim shall be disallowed; or

(3) The deceased was a veteran of any war or was discharged or released from active military, naval, or air service for a disability incurred or aggravated in line of duty, and the body of the deceased is being held by a State (or a political subdivision of a State), and the Secretary determines,

(i) That there is no next of kin or other person claiming the body of the deceased veteran, and

(ii) That there are not available sufficient resources in the veteran's estate to cover burial and funeral expenses; and

(Authority: 38 U.S.C. 2302(a))

(4) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(Authority: 38 U.S.C. 501, 2302)

(c) *Death while properly hospitalized.* If a person dies from non-service-connected causes while properly hospitalized by VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 2303(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term *hospitalized by VA* means admission to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a); admission (transfer) to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703; admission (transfer) to a nursing home under the authority of 38 U.S.C. 1720 for nursing home care at the expense of the United States; or admission (transfer) to a State nursing home for nursing home care with respect to which payment is authorized under the authority of 38 U.S.C. 1741. (If the hospitalized person's death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (g) of this section instead of this paragraph.)

(Authority: 38 U.S.C. 2303(a))

(d) *Determinations.* Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Department of Veterans Affairs will determine line of duty. The burden of proof will rest upon the claimant.

(e) *Persons not included.* Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

(1) A discharged or rejected draftee or selectee.

(2) A member of the National Guard who reported to camp in answer to the President's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.

(3) An alien who does not come within the purview of § 3.7(b).

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(4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Pub. L. 190, 79th Congress.

(5) Temporary members of the Coast Guard Reserve.

(f) *Plot or interment allowance.* A plot or interment allowance is payable to the person or entity who incurred the expenses in an amount not to exceed the amount specified in 38 U.S.C. 2303(b) (or if the entitlement is under § 3.40 (c) or (d), an amount computed in accordance with the provisions of § 3.40(c)) if the following conditions are met:

(1) For claims filed on or after December 16, 2003:

(i) The deceased veteran is eligible for burial in a national cemetery;

(ii) The veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States;

(iii) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(2) For claims filed before December 16, 2003:

(i) The deceased veteran is eligible for the burial allowance under paragraph (b) or (c) of this section; or

(ii) The veteran served during a period of war and the conditions set forth in § 3.1604(d)(1)(ii)–(v) (relating to burial in a state veterans' cemetery) are met; or

(Authority: 38 U.S.C. 2303(b)(2))

(iii) The veteran was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty (or at time of discharge has such a disability, shown by official service records, which in medical judgment would have justified a discharge for disability; the official service department record showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for determining entitlement to the plot or interment allowance notwithstanding that the Department of Veterans Affairs has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty); and

(iv) The veteran is not buried in a national cemetery or other cemetery

under the jurisdiction of the United States; and

(v) The applicable further provisions of this section and §§ 3.1601 through 3.1610.

(Authority: 38 U.S.C. 2303(b))

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or nonservice-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 2302 or the amount specified in 38 U.S.C. 2307 if the cause of death was service connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran's place of death to the national cemetery nearest the veteran's last place of residence in which burial space is available. The amounts payable under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.

CROSS REFERENCES: Definitions; veterans See § 3.1(d). Protection; burial allowance. See § 3.954.

[26 FR 1620, Feb. 24, 1961, as amended at 44 FR 22721, Apr. 17, 1979; 47 FR 11012, Mar. 15, 1982; 48 FR 41162, Sept. 14, 1983; 52 FR 34909, Sept. 16, 1987; 56 FR 25045, June 3, 1991; 60 FR 18356, Apr. 11, 1995; 62 FR 35423, July 1, 1997; 71 FR 8222, Feb. 16, 2006; 71 FR 44919, Aug. 8, 2006]

### § 3.1601 Claims and evidence.

(a) *Claims.* Claims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) and plot or interment allowance under § 3.1600(f) must be received by VA within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge